

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 274 of 2000

in

SPECIAL CIVIL APPLICATION No 3947 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAFABHAI GANDABHAI

3RD SPECIAL LAND ACQUISITION

Versus

SURAT MUNICIPAL CORPORATION

Appearance:

MRS MADHUBEN SHARMA for Appellants

Mr.K.J.Mekwan for M/s.Trivedi & Gupta for Respondent

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE J.M.PANCHAL

Date of decision:31/07/2000

CAV JUDGEMENT(Per D.M.Dharmadhikari, CJ)

The appellants 56 in number named in the cause title of this Memo of Appeal claim to be in occupation of portion of plot no.7 which admittedly is included in Town Planning Scheme No.8 (Umarwada) within the municipal limits of Surat Municipal Corporation. According to them, they are living on different portions of the said plot by erecting their houses or hutments. They apprehend their forcible eviction from their place of living under notice served on them by the Corporation of Surat in exercise of powers under Section 212 of the Bombay Provincial Municipal Corporation Act, 1949. They feel aggrieved and assail the order of the Learned Single Judge (M.C.Patel, J) dated 27.6.2000 whereby their Special Civil Application No. 3947 of 1999 for restraining the Municipal Corporation from evicting them has been dismissed.

2. As the record of this appeal shows, this is the third round of litigation on the same cause of action.

3. Surat Municipal Corporation prepared a Draft Town Planning Scheme No.8 (Umarwada) on 10.5.1968 under which the proposed width of Lambe Hanuman Road was 80 feet wide keeping in mind future industrialisation and development on the eastern part of Surat City. Subsequently, the final scheme was prepared. Against the proposed widening of Lambe Hanuman Road, the present petitioners had filed writ petitions in 1991 and 1998 which were dismissed by this Court with directions to the Corporation to provide the petitioners an alternative site.

4. In the year 1998, the Railway Authorities established Booking Office on eastern side of the Railway Station to meet the growing need of the population on the eastern part of the city. On establishment of the railway booking office, the traffic (both vehicular and pedestrians) substantially increased. This made it urgent for the Corporation to take up widening of the Lambe Hanuman Road to ease the bottlenecks and congestion in traffic. There was also need to provide a parking place near the Booking Office. It is in this background of urgency, that according to the Corporation, a notification dated 18.11.1998 under Section 210(1)(a) of Bombay Provincial Municipal Corporation Act, 1949 (for short "BPMC Act") was issued for widening of Lambe Hanuman Road starting from railway underbridge on final plot no.4 & 7 of T.P.S.No.8 (Umarwada). Aggrieved by the notification dated 18.11.1998 of the Commissioner of the

Corporation prescribing a line of T.P.S.No.8(Umarvada), the present petitioners had moved this Court by way of Special Civil Application No. 3101 of 1999.

5. This Court (Coram: D.C.Srivastava, J) disposed of the said petition by merely directing the Commissioner of the Municipal Corporation and directing the Director of Planning, Surat Municipal Corporation to decide the representations of the petitioners by a reasoned and speaking order within a period of 1 month from the date of production of copy of order of the Court passed on 20.5.1999. Until decision by the Director on their representations - Status quo was directed to be maintained.

6. Pursuant to the directions of this Court, the Director of Planning issued a fresh notice to the petitioner dated 24.3.1999 to which the petitioners gave a reply. They were given opportunity of hearing. The Director of Planning thereafter passed a speaking order dated 20.5.1999 which has been impugned in the Special Civil Application and in this appeal. The Director held that on enforcement of T.P.S.No.8 and looking to the urgency of widening of Lambe Hanuman Road, the petitioners who claim merely to be lessees from the society have no right to resist their eviction and cause obstruction to completion of the construction work.

7. It may also be stated that earlier SCA No.1931/91 had been filed by the petitioners to challenge the proposed lay out of 80 feet wide Lambe Hanuman Road. The said petition being SCA No. 1931/91 was disposed of by Division Bench of this Court (Coram : M.B.Shah & R.D.Vyas, JJ, as they then were) on 12.8.1992. On the statement made on behalf of the Corporation that all the petitioners would be offered an alternative site for living in Final Plot No.80 of T.P.S.No.8, the petitioners withdrew their petition. In this 3rd round of litigation, Ld. Counsel appearing on behalf of the petitioners contends that the petitioners are occupying the land since last more than 3 decades. They claim to be tenants of one Mohammed Ibrahim. They state that after 1960 their land in question came to be owned by one Saifi Cooperative Society. The petitioners continued to occupy the land and were paying rent to the society. According to them, they are not encroachers or unauthorised occupants. They were paying municipal taxes regularly.

8. It is argued that the Saifi Cooperative Society has filed a civil suit for eviction against the

petitioners which is pending. It is submitted that in order to indirectly help the Saifi Cooperative Society, in the proposed scheme the road is proposed to be widened in such a way as to include the land under occupation of the petitioners for living. It is submitted that the whole action of the Corporation is malicious. Ld. Counsel on behalf of the petitioners also admitted the fact that there were in the past approaches made to this Court by Special Civil Application and the Corporation had offered to provide them alternative site, It is however submitted that the Corporation failed to offer any alternative site and the statement now made on the behalf by the Counsel for the Corporation is not factually correct. On behalf of the petitioner, it is submitted that there is no urgent necessity to evict the petitioner from the place of their occupation and they should be allowed to continue in occupation pending the decision of the Civil Suit.

9. On the resume of the facts given above, we find no merits in the contentions advanced on behalf of the petitioners. T.P.S.No.8 and proposed lay out for widening Lambe Hanuman Road cannot be questioned by the petitioners. There is no evidence nor circumstances to suggest that the action of the Corporation is malafide. There is no obvious reason for the Corporation to collude with Saifi Cooperative Society. The Cooperative Society is not likely to be benefitted by the proposed action of the Corporation.

10. On behalf of the Corporation, the urgency has been shown for acquiring the land for widening of the road to ease the congestion of traffic near the Railway Booking Office. There is no ground to disbelieve them.

11. This Court also finds that the Corporation had offered alternative site to the petitioner to shift but they failed to avail the offer. On behalf of the Corporation the offer to provide them alternative site, earlier suggested still stands. Under the Town Planning notice of eviction to the petitioners. The rights of individuals have to be sacrificed for public interest and social needs. The petitioners' occupation on the land is not as owners but through the previous owner or the Saifi Cooperative Society. The owners have not resisted. The petitioners are already litigating their right vis.a.vis the previous owner of the land in the civil suit. The statutory rights of the Corporation under the B.P.M.C. Act or Gujarat Town Planning and Urban Development Act are not in any manner adversely affected by pendency of

any Civil Suit interse between the owner of the land and their lessees.

12. As the history of the previous litigation shows that the petitioners have been given a long period to peaceably shift to the site which they can acquire or the site which was proposed by the Corporation, no further indulgence can now be shown.

13. Similar directions in respect of T.P.S.No.16 have been made by us in L.P.A. No. 1252/99 to 1256/99 in Special Civil Application No. 4311/98 decided on 29.3.2000 and we propose to adopt the same course in this appeal.

14. Keeping in view the current monsoon season, we direct the respondents i.e. Municipal Authorities not to take coercive steps for eviction upto 7.11.2000. The petitioners are allowed the intervening period to search an alternative site for themselves or to shift to the site proposed by the Corporation. After 7.11.2000, it would be open to the Municipal Corporation to take coercive measures as permissible in law, to evict the petitioners. It is however made clear that minimum force should be used by the Corporation and care should be taken that no person or property is harmed or destroyed. The petitioners shall be given reasonable facilities and time to vacate with their families and belonging. For that purpose necessary help shall be extended by the Authorities of the Corporation. With the above directions, this Appeal stands disposed of. Rule is discharged. No order as to costs.

(D.M.Dharmadhikari, CJ)

(J.M.Panchal, J)

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